IN THE COUNTY COURT OF VICTORIA

Revised
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AT MELBOURNE
CRIMINAL JURISDICTION

CR 17-01784

DIRECTOR OF PUBLIC PROSECUTIONS

VICTORIAN GOVERNMENT REPORTING SERVICE

7/436 Lonsdale Street, Melbourne Vic 3000 - Telephone 9603 9134

198805

v

TRACEY COOK

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	8 February 2018
DATE OF SENTENCE:	16 February 2018
CASE MAY BE CITED AS:	DPP v Cook
MEDIUM NEUTRAL CITATION:	[2018] VCC 444

REASONS FOR SENTENCE

Subject:	Criminal Law - Sentence
Catchwords:	
Legislation Cited:	
Cases Cited:	
Sentence:	

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Ms R Champion	OPP
For the Accused	Mr D Galbally QC	Madgwicks Lawyers

HIS HONOUR:

Introduction

1 Tracey Lee Cook, you have pleaded guilty to four charges of Obtain Financial Advantage by Deception contrary to s 82(1) of the *Crimes Act* 1958. The maximum penalty pursuant to s 82(1) is 10 years imprisonment.

2 You have no prior criminal history.

Circumstances of the offence

3 The prosecution tendered an opening on the plea which may be summarised as follows:

4 Between 1 August 1997 and 26 August 2016 you, Tracey Lee Cook were employed by the Australia and New Zealand Banking Group Ltd (ANZ). At the time of the offending subject to the indictment, your position was described as a Senior Manager, Transaction Processing. Your role was to oversee the day-to-day operations within that group which dealt with cheque processing. You were in charge of a team consisting of approximately 162 staff Australia wide.

5 As part of your role at the ANZ, you had access to a number of accounts such as the 'VR3 Manager Account', and the 'General Ledger Direct Remittance Account' both of which were set up to hold dishonoured cheques and also to hold the value of missing cheques. Another ANZ account that you had access to was the 'LB Vic Computershare Account' which was set up in order to process cheques sent to a GPO box. The fourth account to which you had access and relevant to the offending, was the 'General Ledger Write Off Account'. This account is an internal ANZ account used when the value of a cheque cannot be recovered and that value is therefore 'written off' within that account.

6 Between 17 December 2014 and 8 July 2016 (the timeframe covering the four charges on the indictment), you made 14 fraudulent transactions using the above mentioned accounts totalling $311,529.62. All of the transactions were authorised by you during the course of your employment with ANZ.

7 The 14 fraudulent transactions are reflected on the indictment as three rolled up charges (Charges 1, 2 and 3), constituted by multiple instances of obtaining financial advantage by deception, and one charge in relation to a single instance of obtain financial advantage by deception (Charge 4). Schedules are attached to the indictment that detail the individual transactions in relation to the three rolled up counts.

8 In order to complete the transactions, you asked members of your staff subordinate to you and whom you managed, to process the transactions on your behalf. The particular forms of transactions that you used to fraudulently transfer money to your benefit was a normal process undertaken by your staff on a day-to-day basis.

9 To avoid detection, you provided false information as to why the ANZ accounts were being debited and the destination accounts being credited. The false information was recorded as part of the transaction.

10 For the majority of the fraudulent transactions, the reason you provided to investigators in your record of interview was related to a change in the delivery company used by ANZ resulting in missing bags of cheques. This was a legitimate problem that existed in the bank and your team was responsible for the replacement cheque process. You knew that several bags containing cheques had gone missing and that the recovery process for those would take some time. You used that as an explanation for several fraudulent transactions. Other reasons given included that the transaction was part of a replacement cheque process or that there had been processing errors where

funds had been returned because they had been credited to an incorrect account.

11 Most of the payments involved the transfer of money into company accounts in your husband's name. Other payments involved the transfer of money to the Australian Tax Office, to your sister, to a person from whom you had purchased a jet ski, to a credit card account, and to a law firm to pay a deposit on an investment property that you had purchased.

12 In some instances you transferred money into and out of various accounts which had the effect of delaying any investigation into the transfers. In other instances you transferred money into the General Ledger Write Off account which had the effect of writing off the missing value. You provided false information as to the reason why the money was being transferred in order to cover up the fraudulent transaction.

13 The missing funds in the VR3 Manager Account were not detected for a considerable amount of time because there was a regular flow of funds coming into that account in relation to the missing bags of cheques.

14 The details as to the individual transactions that make up the rolled up charges and the single transaction charge are outlined in the prosecution opening that was tendered on the plea. I will not therefore repeat in these reasons the way in which each transaction constitutes the rolled up charges.

15 What can be said however is that in relation to all the transactions, once you had obtained the money, you used it for various purposes such as payment for a jet ski, payment to family members because of money you owed to them, the paying off of credit cards related to you, payment for a car purchased for your husband, payment of general household bills, payment used towards an investment property which you had purchased and significant sums of money used to pay your husband's taxation obligations.

16 In early 2016 an ANZ employee, Ms Gail Coller, who was responsible for reconciling the VR3 Manager Account, found questionable debits to the amount of $4265.00. Ms Coller approached you and you supplied apparently plausible reasons for the transactions. She continued to follow-up with you concerning these transaction, however you continued to supply explanations to avoid detection.

17 In July 2016, Ms Coller noticed a debt of $29,874.00 to the VR3 Manager Account. Ms Coller investigated this and traced the credit to an account belonging to your husband.

18 On 11 August 2016, Ms Coller discussed this matter with her manager Ms Hilda Cousins and another manager Mr Garry Plumridge. They met with you later that day. You admitted that you conducted the transfer. You became distraught and were crying when confronted with this information.

19 On 12 August 2016, the head of Group Investigations at the ANZ, Mr David McGowan became aware of your fraudulent conduct. On 15 August 2016, Mr McGowan telephoned you and you admitted that you had stolen money from ANZ internal accounts. You agreed to attend a meeting with Mr McGowan.

20 On 16 August 2016, you attended the meeting with Mr McGowan and another senior investigator. At that interview you made various admissions that you had taken the money from a manager account that you controlled at the bank. You admitted that you put pressure on people who you had instructed to process the transactions on your behalf. You stated that the staff members never questioned your instructions because they trusted you as their leader. You admitted that with the money you took you paid personal debts including credit cards and your husband's business bills including his tax debts. You said that your family were living a life they did not really have to live.

21 On 22 August 2016, a further interview was conducted at the bank with Mr McGowan and another investigator from the bank. At that interview you provided further details of other transactions you had made. For example, you said that $70,000 from the manager account was conveyed to a law firm for the purposes of a deposit on a property across the road from your home. You had asked a staff member to conduct that transaction and instructed the staff member to record that the transaction was in relation to a 'missing bag Startrack'.

22 On 26 August 2016, your employment was terminated. A complaint was made to Victoria police.

23 On 28 October 2016 you repaid $262,165.11. This was the full amount owed by you to the ANZ as a result of your offending once the value of your long service leave was deducted from the overall total.

24 On 31 October 2016, you attended St Kilda police station where you were arrested. You participated in a taped record of interview. You made full admissions in relation to the offending and further stated that at the time of the offending, you knew it was wrong and you felt bad about it. You further stated in that record of interview that your annual income from the ANZ was approximately $200,000 and the annual income from your husband's business was approximately $250,000 to $300,000.

The objective seriousness of the offending

25 The offending resulting in these charges occurred over a relatively prolonged period of approximately 17 months. You were an employee of a major bank in a senior position in charge of a team of approximately 162 staff Australia wide. You were in a trusted position as an employee and a manager.

26 When interviewed by your employer and confronted with these allegations, you stated that you put pressure on the employees instructed to process the transactions on your behalf. Your staff trusted you and never questioned the transactions. Your offending was calculated and designed to avoid detection.

27 The money you obtained as a result of the deceptions was used entirely for personal lifestyle reasons such as the purchase of a jet ski, a car, an investment property and paying off debts in relation to your husband's business. There was no evidence presented at the plea that your offending was done for any reason other than to benefit yourself and your family. On your own admission in the record of interview conducted with the police, the combined income from your employment and your husband's business is in the order of $450,000 to $500,000 per year. Your own response to ANZ investigators corroborates the obvious conclusion to be drawn from your offending behaviour which was that your family was ‘living a life they did not really have to live’.

28 In my view in all the circumstances, it can only be concluded that your offending is a serious example of offences of this nature. It is a gross breach of trust by an employee in a managerial position conducted for the sole purpose of obtaining more money for yourself and your family in circumstances where you were already earning significant income.

Personal circumstances

29 You are now 44 years of age. You are one of eight children born into a close and loving family where your father worked six days a week and your mother stayed at home to care for you and your siblings. You had a close relationship with your father and have maintained a very close relationship with your older sister Debra Goodman, who gave evidence on the plea and wrote a reference on your behalf. It was clear from the evidence she gave that you are indeed a

close family and you enjoy the support of your siblings, most particularly Ms Goodman. It would seem that now that you are facing a period of time in custody, Ms Goodman will be able to offer you and your family some support, particularly to your daughters.

30 In 2011, your father passed away suddenly of emphysema. It was submitted on your behalf that this had a devastating impact on you. Further, your marriage was placed under significant stress in early 2013 and your sister Debra Goodman was diagnosed with terminal cancer at about the same time. It was submitted that these events in combination were significant stressors in your life. It was further said that at the time of these offences you were under significant workplace stress as a result of changes in structure at the ANZ and changes in senior management. Ultimately, it was submitted that the culmination of these life and work stressors affected you adversely and that you began to abuse alcohol.

31 A report was tendered on the plea by counselling psychologist Sandra Stewart. Following your resignation from the ANZ as a result of these offences, you began counselling with Ms Stewart and had at the time of writing her report attended over 100 sessions with her. Ms Stewart provided a comprehensive personal history together with a history of your sessions with her. Despite the fact that the report did not comply with the practice note in relating to expert reports on mental functioning of offenders, the author provided some detail in relation to the stressors outlined above that existed at the time of your offending behaviour.

32 Following discussion during the plea about the content of the report, Mr Galbally who appeared on your behalf did not seek to rely on any *Verdins* principles arising from the conclusions within that report, quite correctly in my view. While it seems that at one stage during the course of counselling Ms Stewart identified that you were suffering from severe depression, she further

states towards the end of the report that you are no longer depressed or experiencing intrusive thoughts.

33 While it is to your credit that you sought assistance following detection for these offences, it is clear from the report and from your history, there is no causal link between the stressors that you have identified and the offending behaviour. The matters identified by you and Ms Stewart, whilst significant and important, are not matters that explain your offending or lessen your moral culpability.

Matters in mitigation

34 On 15 August 2016, you were contacted by the head of Group Investigations at the ANZ, Mr David McGowan. In that telephone call you admitted that you had stolen money from ANZ internal accounts. You agreed to cooperate and you attended a meeting the next day with investigators from ANZ. In that interview you made various admissions as I have already outlined. You explained how you conducted the transactions and where you directed the money. On 22 August 2016, you attended a second interview where again you provided further detail about your fraudulent activity.

35 As noted above, once the internal investigation had taken place and you had admitted your wrongdoing, you were terminated from the ANZ on 26 August 2016. Two months later on 28 October 2016, you repaid $262,165.12 being the full amount owed by you to ANZ as a result of your offending less the value of long service leave which was deducted from the total period.

36 There can be no doubt that your admission of wrongdoing ultimately leading to your plea of guilty must be considered as a plea of guilty at the earliest opportunity. You cooperated immediately with the internal investigation and later with the police investigation.

37 You come before the court with no prior criminal history. I received references from three people; Truong Pham and Tanya McVicar, both close friends, and your sister Debra Goodman. The writers of the references all gave evidence under oath confirming the content of their letters which were tendered on the plea. They all confirm, and I accept, that up until the time of this offending you were a woman of good character with a stable family life.

38 The fact that you have repaid the money is a matter that is of significant weight in the sentencing consideration. You fully compensated the ANZ bank at an early stage which has avoided any involvement of the bank in these proceedings or the need for compensation applications and orders. This has also saved further time and expense.

Sentencing considerations

39 It was submitted on your behalf that specific deterrence should not be given weight in the sentencing discretion. Ms Champion, who appeared on behalf of the DPP, also accepted that specific deterrence is not a matter that needs to be given weight in the circumstances.

40 It is clear that the impact of the investigation, the termination of your employment and being charged with serious criminal offences that have led to a term of imprisonment, have had and will continue to have a significant deterrent effect on you. As such, in my view, there is little chance of you reoffending. Your offending has also ended what was a very successful career in the banking industry.

41 Furthermore, in order to understand your behaviour and the impact on you and your family, you have voluntarily engaged in counselling over an extended period with Ms Stewart. She concludes that you understand your actions were wrong, that you are aware that other people have been affected by your actions and that you are sorry for the negative impact on them. You have also

ceased drinking. In my view it is clear from the comments in the report of Ms Stewart, together with the comments of the referees, that you have an acute awareness of the effect that your behaviour has had and will continue to have on your immediate family, particularly your teenage daughters.

42 It was submitted on your behalf that it is in the public interest to keep your family together. In other words, that the sentence that should be imposed should not require you to serve a term of imprisonment. You have two daughters aged 17 and 15. Your eldest daughter is currently completing her final VCE year. There is no question that your offending behaviour and the fact that you will now have to spend time in custody will cause significant disruption to your family. It is a very sad circumstance to have a daughter in her final VCE year while you are in prison because of your actions, unable to support her. In your specific circumstances it would of course, as is the case with many individuals facing a term of imprisonment, be in the public interest not to disrupt your family.

43 However there are a number of other important sentencing principles which must be considered in accordance with the law and in my view, the public interest. Sentencing principles such as general deterrence, just punishment and denunciation of your conduct are matters that are highly relevant in the circumstances of your offending.

44 Ms Champion submitted that your moral culpability is high. I agree. As noted above, the way in which you orchestrated the transactions from a trusted position with your employer and then directed the funds purely to personal gain without any real explanation, in my view exhibits a high moral culpability. In the circumstances general deterrence is paramount and must be given considerable weight in the sentencing exercise.

45 You have no prior criminal history and, as attested to by your referees, your offending behaviour is inconsistent with your previous character. That said, the offending continued over a 17 month period and was not an isolated incident. Nevertheless, I accept that your prospects of rehabilitation are very good. As noted, the impact of detection, investigation, criminal charges and ultimately a term of imprisonment has had a salutary effect on you.

Sentence

46 Please stand.

47 Tracey Lee Cook, on Charge 2 you are convicted and sentenced to 18 months imprisonment. On Charges 3 and 4 you are convicted and sentenced to

14 months imprisonment. On Charge 1 you are convicted and sentenced to 12 months imprisonment.

48 I direct that three months on Charge 3, two months on Charge 4 and one month of Charge 1 be served cumulatively on each other and on the sentence imposed on Charge 2.

49 That makes for a total effective sentence of 24 months imprisonment. I direct that you serve 15 months imprisonment before becoming eligible for parole.

50 Pursuant to s.18 of the *Sentencing Act* 1991, I declare that seven days be reckoned as a period of imprisonment already served under the sentence I have imposed. That does not include today.

51 Pursuant to s.6AAA of the *Sentencing Act* 1991, I indicate that had you not pleaded guilty I would have sentenced you to three years imprisonment with a non-parole period of two years.

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